

15-1363 HASTY V. TURKMEN

DECISION BELOW: 789 F.3d 218

LOWER COURT CASE NUMBER: 13-981, 13-999, 13-1002, 13-1003, 13-1662

QUESTION PRESENTED:

This putative class action was filed by foreign nationals who were illegally in the United States and detained following the September 11th terrorist attacks. The FBI designated respondents as "of interest" or "high interest" to its investigation into the attacks; Bureau of Prisons policy mandated that detainees so designated be housed in the most restrictive conditions permissible. Respondents brought this action seeking to hold petitioners Dennis Hasty and James Sherman, who were the Warden and Associate Warden at the Metropolitan Detention Center, personally liable in damages, along with others. Respondents claim that Hasty and Sherman should be liable because (*inter alia*) they concluded-and thus "knew"-that *the FBI* lacked evidence to support its terrorism designations for respondents. The questions presented are:

1. Whether, as the Second Circuit held, the judicially implied cause of action for damages against individual officials recognized in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), extends to this context.
2. Whether qualified immunity was properly denied, notwithstanding the specific circumstances confronted by petitioners-including the FBI's terrorism designations for respondents-because the Constitution "clearly" prohibits any "condition of pretrial detention not reasonably related to a legitimate governmental objective," Pet. App. 57a-58a, or imposed "because of * * * race, ethnicity, religion, and/or national origin," id. at 72a-73a.
3. Whether the allegations against Hasty and Sherman-such as the assertion that they "knew" the FBI's terrorism designations for respondents were wrong but imposed otherwise mandatory confinement conditions because they had discriminatory intent-are sufficiently plausible to state a claim under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

CONSOLIDATED WITH 15-1358 AND 15-1359 FOR ONE HOUR ORAL ARGUMENT.

JUSTICE SOTOMAYOR AND JUSTICE KAGAN TOOK NO PART.

CERT. GRANTED 10/11/2016